

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

BJ'S FLEET WASH, LLC,

Plaintiff,

vs.

**CITY OF OMAHA, and MATT
KALCEVICH, BROOK BENCH, KARI
VASQUEZ, and STEVEN SLATER, in their
individual capacities;**

Defendants.

8:22CV131

ORDER

This matter comes before the Court on the Motion for Protective Order (Filing No. 98) filed by the City of Omaha and Brook Bench, and with the Consent of Plaintiff. Upon consideration of the motion, the Court enters the following Protective Order governing the disclosure of material in response to Plaintiff's Request for Production of Documents Number 13.

1) Definitions. As used in this Order:

- a. Action refers to the above-captioned litigation.
- b. Producing Party refers to the City of Omaha and Brook Bench..
- b. Confidential Discovery Material includes all information produced by the Producing Party in response to Request for Production No. 13.
- d. A Receiving Party is a party to this litigation that receives Discovery Material from Producing Party.

2) Manner of Confidential Designation. A Producing Party shall affix a "CONFIDENTIAL" designation to any confidential Discovery Material produced in this Action.

- a. As to documentary information (defined to include paper or electronic documents, but not transcripts of depositions or other pretrial or trial proceedings), the Producing Party must affix the legend "CONFIDENTIAL" to each page that contains protected material.
- b. If only a portion or portions of the information on a document page qualifies for

protection, the Producing Party must clearly identify the protected portion(s) (e.g., by using highlighting, underlining, or appropriate markings in the margins).

- c. If it is not feasible to label confidential Discovery Material as "CONFIDENTIAL," the Producing Party shall indicate via cover letter or otherwise at the time of production that the material being produced is CONFIDENTIAL.

Counsel for a disclosing party may further designate confidential Discovery Material as CONFIDENTIAL--ATTORNEYS' EYES ONLY if such counsel concludes in good faith that the material is or contains non-public information that is highly sensitive proprietary information including, but not limited to, trade secrets, privileged information, or nonpublic technical, financial, personal or business information. Discovery Material designated as CONFIDENTIAL - FOR ATTORNEYS' EYES ONLY means any document which bears the legend CONFIDENTIAL - FOR ATTORNEYS' EYES ONLY or, if it is not feasible to label the Discovery Material, which the producing party indicates via cover letter or otherwise at the time of production as CONFIDENTIAL - FOR ATTORNEYS' EYES ONLY.

3) **Qualified Recipients.** For the purposes of this Protective Order, the persons authorized to receive Confidential Discovery Material (hereinafter "Qualified Recipient") are:

- a. The Receiving Party, Legal counsel representing the Receiving Parties, and members of the paralegal, secretarial, or clerical staff who are employed by, retained by, or assisting such counsel;
- b. Consulting or testifying experts for the Receiving Party, defined to include only those experts retained or employed to assist the Receiving party in preparing for trial or any other proceeding in the Action and who need access to the information to provide such assistance, and who are not employed by, or an agent or representative for, the Receiving Party, nor anticipated to become an employee, agent or representative of the Receiving Party in the near future;
- c. If necessary to promote alternative dispute resolution, any mediator or arbitrator (and their assistants or staff) retained by the parties who needs access to the information to assist the parties with resolving the claims of this Action;
- d. Court reporters for depositions taken in this Action, including persons operating video recording equipment and persons preparing transcripts of testimony; and
- e. The court and its staff, any court reporter or typist recording or transcribing

hearings and testimony, and jurors.

- 4) **Dissemination by the Receiving Party.** Counsel for the Receiving Party shall:
 - a. Require Qualified Recipients who are non-expert witnesses or expert witnesses and consultants and who receive confidential information designated to review and acknowledge, in writing, the terms of this Protective Order before receiving confidential Discovery Material.
 - b. Instruct witnesses, consultants, and outside counsel who assist with case preparation or represent a witness that disclosure of the information is prohibited as set forth herein.
 - c. Maintain a list of any confidential Discovery Material disclosed and to whom, along with the written acknowledgment required by paragraph 4.a.

The prohibition on disclosing confidential information exists and is enforceable by the Court even if the person receiving the information fails or refuses to sign a written acknowledgment.

5) **Limitations on Use.** Confidential Discovery Material shall be used by the Receiving Party only to prepare for and conduct proceedings herein and not for any business or other purpose whatsoever.

6) **Maintaining Confidentiality.** Confidential Discovery Material shall be held in confidence by each Qualified Recipient to whom it is disclosed, shall be used only for purposes of this action, and shall not be disclosed to any person who is not a Qualified Recipient. Each party, each Qualified Recipient, and all counsel representing any party, shall use their best efforts to maintain all Confidential Information in such a manner as to prevent access, even at a hearing or trial, by individuals who are not Qualified Recipients. Nothing herein prevents disclosure beyond the terms of this Protective Order if the party claiming confidentiality consents in writing to such disclosure.

7) **Copies.** Confidential Discovery Material shall not be copied or otherwise reproduced by the Receiving Party, except for transmission to Qualified Recipients, without the written permission of the Producing Party or, in the alternative, by order of the court. However, nothing herein shall restrict a Qualified Recipient from loading confidential documents into document review platforms or programs for the purposes of case or trial preparation or making working

copies, abstracts, digests, and analyses of Confidential Discovery Information.

8) **Docket Filings.** All documents of any nature including, but not limited to, briefs, motions, memoranda, transcripts, discovery responses, evidence, and the like that are filed with the court for any purpose and that contain Confidential Discovery Material shall be provisionally filed under restricted access with the filing party's motion for leave to file restricted access documents. A party seeking to file Discovery Material under restricted access must comply with the court's rules and electronic docketing procedures for filing such motions.

9) **Depositions.** The following procedures shall be followed at all depositions to protect the integrity of all Confidential Discovery Material:

- a. Only Qualified Recipients may be present at a deposition in which such information is disclosed or discussed.
- b. All deposition testimony which discloses or discusses Confidential Discovery Information is likewise subject to this Order.

10) **Use at Court Hearings and Trial.** Subject to the Federal Rules of Evidence, Confidential Discovery Material may be offered and received into evidence at trial or at any hearing or oral argument. A party agreeing to the entry of this order does not thereby waive the right to object to the admissibility of the material in any proceeding, including trial. Any party may move the court for an order that Confidential Discovery Material be reviewed *in camera* or under other conditions to prevent unnecessary disclosure.

11) **Return or Destruction of Documents.** Upon final termination of this Action, including all appeals, each party shall make reasonable efforts to destroy all Confidential Discovery Material. The destroying party shall notify the producing party when destruction under this provision is complete. If a party is unable to destroy all Discovery Material, that material shall be returned to the Producing Party or the Producing Party's counsel. This Protective Order shall survive the final termination of this action, and it shall be binding on the parties and their legal counsel in the future.

12) **Modification.** This Protective Order is entered without prejudice to the right of any party to ask the court to order additional protective provisions, or to modify, relax or rescind any restrictions imposed by this Protective Order when convenience or necessity requires. Disclosure

other than as provided for herein shall require the prior written consent of the Producing Party, or a supplemental Protective Order of the court.

13) **Additional Parties to Litigation.** In the event additional parties are joined in this action, they shall not have access to Confidential Discovery Material until the newly joined party, by its counsel, has executed and, at the request of any party, filed with the court, its agreement to be fully bound by this Protective Order.

14) **Sanctions.** Any party subject to the obligations of this order who is determined by the court to have violated its terms may be subject to sanctions imposed by the court under Rule 37 of the Federal Rules of Civil Procedure and the court's inherent power.

15) **Disclosure of Privileged or Work Product Discovery Material.**

- a. The production of attorney-client privileged, or work-product protected electronically stored information ("ESI") or paper documents, whether disclosed inadvertently or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This Protective Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.
- b. Any party who discloses documents that are privileged or otherwise immune from discovery shall promptly upon discovery of such disclosure, advise the Receiving Party and request that the documents be returned. The Receiving Party shall return such produced documents or certify their destruction, including all copies, within 14 days of receiving such a written request. The party returning such produced documents may thereafter seek re-production of any such documents pursuant to applicable law.

Dated this 6th day of September, 2023.

BY THE COURT:

s/Michael D. Nelson
United States Magistrate Judge

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EXHIBIT A

I hereby acknowledge that I am about to receive Confidential Information supplied in connection with the above-captioned case. I understand that such information is being provided to me pursuant to the terms and restrictions of the Protective Order entered in this case. I have been given a copy of the Protective Order, have read the Protective Order, and agree to be bound by its terms. I understand that Confidential Information as defined in the Protective Order, or any notes or other records that may be made regarding any such materials, shall not be disclosed to any persons except as permitted by the Protective Order.

Dated this ____ day of _____, 20____.

Printed Name

Signature